



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
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DEC 27 2010

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

December 23, 2010

Mr. Sean Trippi
Napa County
Department of Conservation, Development and Planning
1195 Third Street, Suite 210
Napa, CA 94559

Dear Mr. Trippi;

Subject: Rocca Family Winery Use Permit, Mitigated Negative Declaration,
SCH #2010122009, City and County of Napa

The Department of Fish and Game (DFG) has reviewed the Mitigated Negative Declaration (MND) prepared for the Rocca Family Winery (Project). The MND discusses the environmental impacts associated with the new construction and operation of a 20,000-gallon per year winery. A variation to the Airport Industrial Area Specific Plan (AIASP) would be granted as part of the Project to allow development within the 150-foot setback from Suscol Creek. The proposed Project would be located at 129 Devlin Road, approximately 400 feet west of Devlin Road and 200 feet south of Suscol Creek. The existing Project site includes an existing 2,000-square foot residence, grassland, five oak trees and three pine trees. Both sides of the existing access drive are lined with mature eucalyptus trees.

DFG has reviewed the MND for the proposed Project and has determined that it may have a significant unmitigated impact on sensitive resources. The biological analysis does not include an adequate botanical survey at the appropriate time of year to determine the presence of sensitive species in the area. A protocol-level botanical survey should be conducted during the appropriate blooming season for species with potential to occur on-site. Results of the survey should be provided to DFG for review and approval prior to finalization of the California Environmental Quality Act (CEQA) document.

At least four known Swainson's hawk (*Buteo swainsoni*) nesting sites have been located within 1,200 feet of the Project site since 2005, as well as known occurrence data for the western burrowing owl (*Athene cunicularia*). DFG recommends revising the MND to include a description of the sensitive habitats known to occur on the Project site.

Mitigation Measure 1 states that all nest survey results shall be provided to the Napa County Conservation Development and Planning Department. In addition, a Swainson's hawk nesting and foraging analysis shall be provided to DFG, proposing specific mitigation consistent with DFG standards. As noted in multiple entries of the California Natural

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Diversity Database, there is a known nesting location within close proximity to the Project site as well as adjacent nesting habitat. To mitigate for the loss of foraging habitat, appropriate mitigation should be provided based on the following ratios:

- For projects within one mile of an active nest tree – provide one acre of land for each acre of development authorized (1:1 ratio).
- For projects within 5 miles of an active nest tree but greater than one mile from the nest tree – provide 0.75 acres of land for each acre of urban development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree – provide 0.5 acres of land for each acre of urban development authorized (0.5:1 ratio).

Project proponents should ensure the lands are protected in perpetuity and should provide for the long-term management of the lands by funding a management endowment.

Swainson's hawk is listed as a threatened species by the California Fish and Game Commission pursuant to the California Endangered Species Act. Please be advised that a California Endangered Species Act (CESA) Permit must be obtained if the project has the potential to result in take of species listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

Mitigation Measure 1 also requires a nest survey if construction activities shall occur between February 1 and July 31. The MND does not specify a time frame for nest surveys during breeding season. Nest construction for some species is completed in approximately two weeks or less and thus surveys completed 15 to 30 days prior to tree removal or ground disturbance could cause abandonment of the nest and/or eggs. Fish and Game Code § 3503.5 states it is unlawful to take, possess, or destroy any birds in the orders of Falconiformes or Strigiformes (birds-of-prey or raptors) or take, possess, or destroy the nest or eggs of any such bird. If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds, a focused survey for active nests of such birds should be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences) within 15 days prior to the beginning to project-related activities. If nesting birds are found, a 50-foot radius buffer should be established around the nest, a 300-foot radius buffer in the case of hawks and owls. The area should be fenced and avoided until the young have fledged, as determined by a qualified biologist. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with DFG should be required by the County of Napa before project work can be reinitiated.

While birds that nest in the project area after construction activities are underway may be assumed to be acclimated to construction activities, any disturbance to nesting activities or the loss of nests is a potential violation of both state law and the Federal Migratory Bird Treaty Act. The requirement of surveys for breeding birds is necessary prior to initiating construction activities and mitigation measures should be added to ensure the protection of nests, eggs and unfledged young. Aspects of the project that require the removal of mature trees should ensure they are adequately replaced and mitigated.

The western burrowing owl is considered a Species of Special Concern by DFG, and has been documented to occupy the project site. Take of western burrowing owls is prohibited by Section 3503.5 of the Fish and Game Code. This includes causing nest abandonment, loss of reproductive success or direct take of an individual.

Mitigation required in the MND should include an assessment of wintering burrowing owls. If burrowing owls are identified on-site, buffers should be established around occupied nests and burrows at all times of the year, not only during the breeding season. A site-specific proposal for surveys and eviction of owls from the site is to be reviewed and approved by DFG prior to implementation. Additionally, DFG recommends the following be conducted by a qualified biologist to ensure appropriate avoidance and mitigation measures:

- 1) Burrowing owl surveys should be conducted during both the wintering (December 1 through January 31) and nesting (April 15 through July 15) seasons, unless the species is identified on the first survey. These surveys should take place from one hour before to two hours after sunrise, as well as two hours before to one hour after sunset. Surveys should be conducted on multiple days during each of the above mentioned seasons. As burrowing owls are documented during wintering or breeding seasons, additional surveys should be conducted prior to construction to identify occupied burrows within the Project's impact area.
- 2) Surveyed areas should include all potential habitat located within 150 meters of the proposed Project's footprint and staging areas. A 150-meter buffer zone should be surveyed to identify burrows and owls outside of the proposed Project area that may have impacts by the proposed Project construction activities.
- 3) A report on the proposed Project's survey results should be prepared and submitted to DFG.
- 4) To avoid violation of Fish and Game Code §§ 3503 and 3503.5, any occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by DFG verifies through non-invasive methods that either: a) the birds have not begun egg laying and incubation; or b) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

- 5) To offset the loss of any foraging and/or burrow habitat on the Project site, all suitable habitat which will be impacted should be replaced acre for acre with suitable, occupied habitat at an appropriate location. Not less than 6.5 acres of foraging habitat per breeding pair or unpaired resident bird should be acquired and permanently protected. The protected lands should be occupied burrowing owl habitat and at a location acceptable to DFG. The site should provide for the long-term management and monitoring of the species in addition to permanent protection either through a Conservation Easement or transfer of fee title to a DFG-approved entity.
- 6) No disturbance should occur within 50 meters of occupied burrows during the non-breeding season (September 1 through January 31) or within 75 meters of occupied burrows during the breeding season (February 1 through August 31).
- 7) If the destruction of burrows is unavoidable, and occupied nests have been shown through non-invasive methods to be absent, passive relocation techniques should be used for 48 hours prior to construction activities to ensure owls have left the burrow.

If suitable habitat is destroyed prior to adequate burrowing owl surveys, DFG may assume owls to have been present, and mitigation should be required by the lead agency in consultation with DFG.

Please be aware that DFG will require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code for all activities which will impact drainages on the project. Issuance of the LSAA is subject to CEQA. DFG, as a responsible agency under CEQA, will consider the environmental document, which should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement.

DFG appreciates the opportunity to provide comments on the Mitigated Negative Declaration for the proposed Project. If you have any questions, please contact Ms. Suzanne Gilmore, Environmental Scientist, at (707) 944-5536; or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570.

Sincerely,



for Scott Wilson
Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse